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# P R O C E E D I N G S

of the

SELECT COMMITTEE APPOINTED BY THE LEGISLATURE  
OF THE PROVINCE OF ONTARIO, TO ENQUIRE INTO  
AND REVIEW THE CEMETERY ACT AND REGULATIONS  
MADE THEREUNDER.



Mr. J. N. Allan, Chairman, Presiding.

Mr. John Scott, Secretary.



VOLUME II

Monday, August 17, 1953.



(Mrs) J. A. Wilde,  
Official Reporter,  
Parliament Buildings,  
Toronto, Ontario.



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S E C O N D D A Y

Toronto, Ontario,  
Monday, August 17th, 1953,  
1:30 o'clock, p.m.

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The further proceedings of this Committee  
reconvened pursuant to adjournment.

PRESENT:

Mr. J. N. Allan,            Chairman,  
                                 Presiding.

Mr. G. T. Gordon

Mr. E. Sandorcock

Mr. T. D. Thomas (Ontario)

Mr. C. H. Lyons

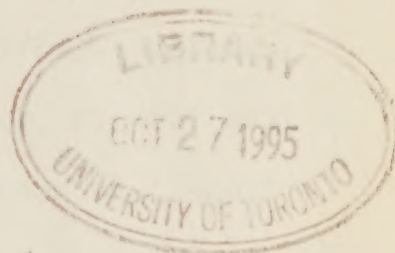
Mr. N. Whitney

Mr. John Root

Mr. J. W. Hanna

Mr. John Scott (Secretary).

Mr. Charles Walker (Solicitor for the Committee)



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APPEARANCES:

Dr. A. E. Berry            Director, Sanitary  
                                 Engineering Branch, Dept.  
                                 of Health, Ontario.

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THE CHAIRMAN: It occurred to me that it would be an advantage to the members of this Committee to, first of all, become very familiar with the present Cemetery legislation.

As I think you are all aware, the administration of that legislation has been the responsibility of Doctor Berry, so I have taken the liberty of asking Doctor Berry to come down this afternoon, to help the members of the Committee become very familiar with the operation of this legislation at the present time.

In addition, I am anxious to discuss with the Committee, a suitable date to resume hearings to enable everyone in this district to have an opportunity of presenting anything they wish to this Committee.

Before the afternoon is over, we will select a date which will be as suitable as possible, and if you are agreeable, I will suggest that we instruct the Secretary (Mr. Scott) to advise those who have expressed a desire to present briefs, or to appear before the Committee, what date or dates we decide upon, and when we begin that hearing, we will continue it until those persons have all been heard.

Another thing which I would like you to consider this afternoon is the desirability of the Committee sitting anywhere else than in Toronto. We





have had several communications from the city of Ottawa, for instance, who are particularly interested, and some from western Ontario. Whether or not it is desirable to meet elsewhere than in the city of Toronto, we will discuss this afternoon as well, and endeavour to arrive at a conclusion.

If the Committee is agreeable, I would ask Doctor Berry to proceed to give us an outline of the legislation as it is presently on the Statutes, in the hope that we become familiar with that first.

DOCTOR BERRY: Mr. Chairman, in presenting this material this afternoon, I had in mind reviewing in a general way, the legislation, and also discussing the problems in the administration of this legislation, which I think will be helpful to you.

As you know, this Act has been on the Statutes for a long time, and has not been changed a great deal over a period of years. There have been amendments from time to time, but no major revisions.

THE CHAIRMAN: Before you begin, Doctor Berry, I wonder if all the members have a copy of the Cemeteries Act with them. Mr. Scott advises me that he is prepared to file all correspondence up to date, and he will give you with that file, a copy of the Act.





DOCTOR BERRY: In order to simplify this, I have prepared an outline of the legislation which you will find on the long sheet.

Legislation may be rather dull if we try to go over it in full detail, but you will see from this brief outline all the points involved in the two pieces of legislation concerned, namely, the Cemeteries Act, Chapter 46, Revised Statutes of Ontario, 1950, and the Regulations which were passed under the Cemeteries Act in 1944. These two pieces of legislation, as you know, are administered by the hon. Minister of Health.

I would like to go over this outline, first of all, dealing briefly with the various Parts of the Act, and I think if you follow along with the Cemeteries Act, and the various sections as they are dealt with, it will probably be easier for you.

If you compare the notes which have been prepared with the abstract of the legislation, as well as the Cemeteries Act, itself, we will be able to see what is involved.

I have set down first of all on the long sheet, the objectives of the legislation in general.

"The objective of the legislation in general is the control of conditions surrounding the





burial of the dead and the maintenance of the grounds including protection of health, supervision of grounds, administrative responsibilities, finances, perpetual care, etc."

That is the general objective of the legislation.

Then, if you will turn to the first page of the printed Act, you will note some definitions are given, and I think it might be well to be familiar with those at the beginning. First, there is the definition of the word "cemetery":

- "(a) 'cemetery' means any land which is set apart or used as a place for the interment of the dead or in which human bodies have been buried.
- (b) 'columbarium' means any structure designed for the purpose of storing the ashes of human remains which have been cremated.
- (c) 'crematorium' means a building fitted with the proper appliances for the purpose of the incineration and cremation of human remains, and includes everything incidental or ancillary thereto."





The rest, I think, are quite obvious.

We come next to the establishment and enlargement of cemeteries. You will notice that Section 2 of the Act requires that land to be used for cemetery purposes must be approved by the hon. Minister of Health. As a requirement, that has been in force for a number of years.

"Sections 1 to 7 of the Act stipulate the conditions under which a Cemetery may be established or enlarged."

Sections 1 to 7 deal with this question of opening up a new cemetery or enlarging an existing one.

"The plans and description of the land first go to the local Board of Health and from there to the Department of Health for the issue of the Certificate of Approval. Factors considered in this are such matters as drainage, contamination of any water course, the need for a cemetery, proximity to residences, etc."

The Board of Health of the area in which the land is situated must first of all approve its use, and if it recommends the proposed cemetery, that information is supplied to the Department of Health





of the province of Ontario. If it meets with the approval of the Department of Health of the province of Ontario, then a Certificate of Approval is issued.

Therefore, the procedure is, first of all, to have this application reviewed by the local Board of Health and then sent on to the hon. Minister of Health for the issuance of the final Certificate of Approval. That is contained in Sections 2 to 7 of the Act.

The next part is, "Authority to make Regulations", and I am now reading from the long white sheet:

"Section 8 authorizes the Lieutenant-Governor in council to make Regulations dealing with a number of items pertaining to cemeteries."

The Regulations are then listed in the Act which are dealt with in a very extensive piece of legislation, but these are the only Regulations which have been passed under the Act dealing in general with cemeteries. That completes the authority to make Regulations.

The next item concerns the responsibilities of local Boards of Health:

"Sections 9 to 11 inclusive place a responsibility on local Boards of Health





to inspect and to supervise the maintenance  
of cemeteries within their jurisdiction."

And referring to Section 9:

"It shall be the duty of the local Board and  
it shall have power - -"

- - - to do those things which are listed there.

Section 10 provides for them to charge for their  
services if it is necessary to do so.

In Section 11, we find that such authority  
rests with the Department of Health, since there is  
no local Board of Health in unorganized territory.

Therefore, in the first Part of the  
Cemeteries Act we have the right to establish or  
enlarge cemeteries, we have the authority to make  
Regulations, and we have the responsibilities of local  
Boards of Health to exercise supervision.

In Section 12, of the Act, I would like  
to draw your attention to the authority which is  
given to the Department, which authorizes the  
Lieutenant-Governor-in-council to appoint any person  
to investigate and report upon the conditions of any  
cemetery.

That authority has been exercised in a  
limited number of instances. Where finances are  
and  
involved, /there is some question about the financial



position of a cemetery, such as the handling of perpetual care funds or matters of that nature, the Lieutenant-Governor-in-Council may appoint any person to investigate those conditions.

The next item deals with perpetual care and maintenance of plots:

"The Cemeteries Act contains a good deal of material on Perpetual Care and the maintenance of plots in the cemetery. Sections 16, 17, 18, and parts of the Regulations deal with this subject. The owner is authorized to receive moneys for this purpose and to invest them in the same manner as trustees are authorized to invest trust money."

They are restricted in the manner in which they can invest these perpetual care funds.

"The owner is authorized to receive moneys for this purpose and to invest them in the same manner as trustees are authorized to invest trust money. The owner may, if he so desires, pay over these moneys to the Public Trustee of the Province. Section 18 stipulates that the owner of a cemetery which is not operated for gain shall have the right to charge the owner of a plot for





the cost of maintenance. The difficulty in this is the collection of the amount due."

You will note the words, "which is not operated for gain", and you will notice as we go along in the discussion, references from time to time to cemeteries which are operated for gain. That is the term which is used in the Act. The difference lies in the so-called "profit cemeteries" and the others which are operated by church groups, municipalities, or plot holders, but without any authority to pay out moneys for profits.

Section 18, where the cemetery is not operated for gain, gives the owner the right to charge for the maintenance of the plot each year. The difficulty in this is the collection of the amount. Cemeteries often have great difficulty in collecting these annual amounts, and it may be necessary to consider some better way of handling that than exists in the present legislation.

Then on page 2, we have, "The responsibility and duties of the owner":

"Much of the legislation sets out the authority of the owner of the cemetery and his responsibilities. Section 19 gives him the right to acquire additional land





by expropriation if necessary. "

There is a procedure which may be followed if he cannot purchase land in the open market adjacent to the cemetery.

"It is believed, however, that in no case so far has land for enlargement of a cemetery been secured by expropriation."

There has been no case at any time during my contact with the legislation. The authority is there, but it has never been used.

"Section 20 gives the owner the right to make regulations and to control conditions in general in his cemetery."

These rules must be approved by the hon. Minister of Health first.

"Section 21 gives the owner the right to borrow money for use in the cemetery."

I do not think there is a great deal of that being done, because cemeteries do not seem to be anything that people want to loan money on.

" Section 22 outlines some of the duties of the owner."

You will see in the Act, the owner must keep and



maintain the fences about the cemetery, and keep the cemetery and buildings and fences in good order and repair, see that all burials within the cemetery are conducted in a decent and orderly manner, and so on.

That Section stipulates the duties of the owner.

"Section 23 to 26 inclusive also place obligations on the owner. These are generally speaking, duties which will ensure that the grounds are kept in reasonably good condition. Section 27 sets up a procedure where the owner neglects to keep the cemetery in good order. Under those conditions the local Board of Health may take action and charge the cost of doing the work to the owner."

The local Board of Health may give notice to the owner to take care of the cemetery in compliance with the requirements of the Act, and may levy the cost thereof by distress and sales of the owners goods and chattels or maintain an action for the recovery thereof. There has not been very much tendency to utilize the authority in that Section.





Those Sections I have quoted are the ones which place the responsibility upon the owner and the duties which he must carry out.

The next item here is the recovery of unused Burial space. That is dealt with in Section 28. If I am going over this too fast, please say so. What I am attempting to do is give you a "bird's eye view" of what is involved in the legislation, and I hope the abstract will help you understand the Act when you read it over later.

"Section 28 is a useful section in that it gives the owner the right to reclaim burial spaces where no interment has been made for a period of twenty years and the plot has not been maintained for a period of five years."

There are a great many plots in old cemeteries where the full number of graves have not been used and that land would be wasted because the family has moved away, or the relatives have lost touch with it. This provides if there has been no burial there for twenty years and the plot has not been maintained for a period of five years, that unused land may be reclaimed. Therefore, the procedure is set up under Section 28, they must go before





a judge and present the facts there, and they can then obtain the land.

"This is used quite often, it tends to avoid waste space and the cost of maintaining this, by the cemetery owner."

That appears to be a very good Section.

I would like to draw your attention to Section 29:

"Section 29 places an obligation on the owner of a cemetery if that owner is an incorporated company or a municipal corporation."

It is only under those conditions that free graves may be provided, they must be either an incorporated company or a municipal corporation.

The interpretation of this Section is not clear, and while it may have been useful a number of years ago, it appears now to need revising.

A number of cemetery superintendents have asked what is meant by "free graves" -- does it mean "grave space" or does it mean the opening and closing of that grave? Today, with social services which are available, that hardly seems as essential as it did a number of years ago. In addition to that, it only



applies to those two types of cemeteries, not to any of the others.

The next Section I bring to your attention deals with burials and disinterments. This creates a great many problems, Let us look first of all, at Section 32, which sets out the depth of cover over the outside shell, stipulating three feet. At one time, it was four feet and was changed five or six years ago to permit a minimum cover of three feet.

It is interesting to read the legislation in other places, in the United States, and elsewhere, to see the wide variation in the depth of cover. Some are as great as six feet and others are, I think, two and one-half feet, but three feet seems to be the depth recognized as being adequate. It reduces the cost somewhat by not having to go to that extra depth.

" Sections 30, 31, and 33 deal with the disinterment of dead bodies."

There are a great many cases where there is a desire to disinter a body and place it somewhere else, either in the same cemetery or in some other cemetery, and the practice varies a great deal.

"The requirements in Section 30 where the person died of a communicable disease are quite rigid and no latitude is permitted





for the length of time a body has been buried."

You will see that Section 30 says:

"The dead body of a person who has died of- -"

--- any of a number of communicable diseases --

"---shall not be disinterred, except for the purpose of transportation or re-interment and in conformity with the regulations."

That means that if a body died twenty years ago from some communicable disease and they wanted to disinter it, they would still have to go through the same procedure as if the person had just died. There is obviously a need for some revision in that, and I think it is a question of determining the time when these organisms will have left.

"All disinterments are subject to supervision by the Medical Officer of Health of the municipality."

That is for sanitary reasons, of course. The regulations also place further conditions on disinterment, and we will see the requirements of the regulations later on.

Those Sections deal with burials, the depth of cover and the procedure which must be



followed when disinterring a body from a cemetery to transfer it either to the same cemetery to another plot, or to another cemetery entirely.

The next item is "Closing of Cemeteries":

"Sections 34 to 36 inclusive deal with conditions where the closing of a cemetery is deemed desirable. The procedure is a lengthy one involving an order-in-council, publication of notices and other details. A number of conditions may make it desirable to close a cemetery and to remove the bodies therefrom, but the task is always somewhat involved and should be undertaken only when there is a good reason for doing so."

The closing of a cemetery generally means removal of the bodies elsewhere. There is not much tendency to close a cemetery from burial without removing the bodies. There are some cases where further burials are not permitted, and the bodies are left there, but in most cases, the bodies are removed to some other place.

At the top of page 3, I refer to "Prohibitions in a Cemetery":

"Section 37 lists a number of prohibitions in cemeteries."





These include:

"Wilfully destroy, mutilate, deface, injure, or remove any tomb, monument, gravestone, or other structure placed in a cemetery, any fence, railing or other work for the protection or ornament of the cemetery or of any such tomb, monument, gravestone or other structure or of any lot in a cemetery.

(b) Wilfully destroy, cut, break or injure any tree, shrub or plant in a cemetery, or wilfully injure, destroy or deface any building or structure or any road, walk, or other works in a cemetery.

(c) Play at any game or sport in a cemetery.

(d) Discharge firearms in a cemetery."

All these items are prohibited in a cemetery.

"Included in this is injury to or removal of any tomb, monument or gravestone or other structure. This has some disadvantage in old and abandoned cemeteries."

I would like to bring that to your attention later on.

The next item is "Abandoned Cemeteries":

"Section 38 places the onus on the municipality in which the cemetery is situated to assume



ownership when the owner of the cemetery cannot be found or is unknown or unable to maintain it."

That is an important Section, particularly in respect to old cemeteries, and there are a great many of these in the province where no one appears to be responsible for them. Under those circumstances, they become the property of the municipality in which they are located and the Council of that municipality must maintain those cemeteries.

"This has been followed in a number of instances, although, in general, municipalities do not like to undertake ownership and maintenance of these old cemeteries."

That has been the experience when these places are run down, that they do not like to take over control.

The next item deals with the expropriation of the cemeteries or land to be used for cemeteries.

"Sections 39 and 40 give the council of a municipality the right to expropriate any cemetery or to take land which may be desired for cemetery purposes. This has been used to a limited extent only."





There have been, I believe, one or two instances where a municipality has expropriated the existing cemetery, but there is very little desire for them to do that.

The next item deals with the authority of municipal councils:

"Section 41 authorizes Municipal Councils to pass by-laws for a number of matters associated with Cemetery Administration, one of which is the making of an annual grant to the owner of a cemetery either in that municipality or adjacent to it. Section 42 gives the council of every urban municipality and the trustees of every police village the right to pass by-laws prohibiting interment of the dead within their corporation limits."

You will find that prohibition does not apply to townships but merely to towns, cities, and police villages.

"Sections 43 to 47 inclusive add further responsibilities to Municipal Corporations, one of which is to transfer the management of a cemetery owned by the municipality to a Board appointed by the Council."

There are a great many of municipally-owned cemeteries



that are operated or administered by Boards appointed by the Council.

You can see from the Sections I have just quoted municipal councils are involved a great deal in cemetery legislation, and some of them have taken a keen interest in the work and endeavour to maintain the cemeteries under their control. Others have not been favourably disposed towards it.

The next item is "The appointment of Cemetery Trustees and their Responsibilities". I would like you to turn to Sections 48, 49 and 51 of the Act;

"Where no provision has been made for the management of a cemetery, Section 48 gives the inhabitants of a township the right to take a conveyance of land for this purpose and Section 49 gives the trustees so appointed the right to acquire other cemeteries. These two Sections are seldom used."

There is authority for the plotheolders to hold a meeting and to elect trustees. Also, under Section 48, it provides where ten or more inhabitants of a township or part of a township desire to take a conveyance of land for a cemetery, not for the exclusive use of any particular religious body, they





may appoint trustees to whom their successors are appointed in the manner provided by conveyance, the land may be conveyed. They may take over the ownership of that land.

The Section dealing with the appointment of trustees is used to some extent, but there are defects in that which make it rather awkward insofar as the further appointments of trustees are concerned. There is a tendency for trustees to appoint their own successors rather than have them appointed at regular meetings.

The next item deals with Crematoria:

"Sections 53 to 59 inclusive deal with crematoria and cremation of the remains. There is also additional material on this subject in the regulations. Precautions are required prior to the cremation of any body involving a Coroner's certificate."

Every cremation involves a Coroner's certificate.

"There is also authority for the Lieutenant-Governor-in-Council to make regulations to deal with crematoria."

There is some growth in the use of cremation in this country, not nearly as much as it is in



England and elsewhere, but we have two crematoria operating in Toronto, and I will give you some figures later on the number of bodies they are cremating each year.

Mr. Chairman, those are the items in the Act itself. I do not know whether the members would like to discuss this or to ask questions on it at the present time.

THE CHAIRMAN: I think there may be some questions the members would like to ask.

MR. THOMAS (Ontario): I would like to compliment Doctor Berry on the brief he has presented to us which contains all the meat of the regulations and I, for one, member of the Committee, do appreciate that. It is really worth-while, and I would like to extend the thanks on behalf of the members of this Committee, Doctor Berry, for that.

DOCTOR BARRY: I thought you would be able to get the material much easier that way than getting it out of the Act itself.

THE CHAIRMAN: A question which occurred to me, Doctor Berry, is in the Regulations regarding perpetual care. Just how does that work out at the present time? Are you going to go back over some of those things later on?





DOCTOR BARRY: If there are no questions on the Act itself, I would like to give you an outline of the Regulations, and then I will come to the particular points you have in mind. What I have given you is just dealing with the Act itself.

Now we come to the Regulations which have been passed under the Cemeteries Act. If you wish, I can go right on with that. I am now at the bottom of page 3:

"These Regulations amplify and add further requirements concerning cemetery administration. The objectives of the Regulations are similar to those of the Act itself. Some of the more important parts of the Regulations are as follows:

(a) Registration of plans -- this requires the owner of every cemetery to submit to the Minister of Health plans of cemeteries showing the layout and other details."

MR. THOMAS (Ontario): Has that been the practice in years gone by?

DOCTOR BARRY: No, this was only passed in 1944, and there are a great many cemeteries in this province of which we have no record at all. Any cemetery which has been established or enlarged since



the Cemeteries Act came into being, should have done that, but it is very difficult to follow them through.

Probably Mr. Walker could give you more information than I can as to the background of the Act, but the Act came into effect in 1913, and it has not been changed a great deal since that time, except for revisions from time to time.

There is one alteration in the Act which might be drawn to your attention in regard to the powers of the Board of Health which I mentioned earlier.

At one time, there were sanitary commissions appointed by the counties, and these were brought into being in 1931, and later abandoned in 1938.

The feeling was they were not successful. There was a Sanitary Commission made up of three members, one of whom was to be appointed by the Lieutenant-Governor and two to be appointed by the County Council, who were supposed to have authority to review conditions in cemeteries in that County. Some of them worked very well and others did not.

I think I should also tell you that at one time the administration of the Cemeteries Act was under the Department of the Attorney-General, and was later transferred to the Health Department





about twenty-five or thirty years ago, and has remained under that Department ever since. It is one of those Acts which might be administered by different departments, but apparently the feeling was the Department of Health was more involved in it than any other department.

We can go on with the Regulations, and if you have the white copy of the Regulations, the white pamphlet which is in with the Cemeteries Act itself, I think you should follow it.

THE CHAIRMAN: Mr. Scott, our Secretary, was afraid they had not been put in with the Act, so he is getting the copies of them now.

DOCTOR BARRY: First of all, I would like to call your attention in the Regulations to the registration of plans which we have referred to. That is not easy to obtain for the reason that so many of the cemeteries do not have plans available.

It seems unfortunate that so many of these old cemeteries have no records whatever of the layout of their plots and walks. They do not know where the graves are, and the object in making this regulation was that in future all cemeteries would have a plan and a record of where the walks were, where the plots were, and so on.

We are continually getting these from time



to time from the old cemeteries, but we do not know how many are missing. There are obviously a great many in the province from whom we do not have that information, and they do not have it either. We do not ask for any special plan from them as long as it is intelligible. They come in on all kinds of paper, on the backs of calendars, on brown paper, but so long as they can be read, we accept them.

The next item under "Regulations" as you will see on the top of page 4, is "Interments in Lots":

"Regulations 7 to 9 deal with conditions which must be observed prior to interment of a body in a plot."

That sets the minimum size of the grave to be eight feet by three feet and that every interment shall be made in a lot that size on a plan approved by the hon. Minister of Health.

"No interment shall be made without the written consent of the owner of the lot, or of a person who satisfies the owner of the cemetery that such person represents the owner of the lot."

This cures a number of difficulties which



arise from people burying bodies in plots where there was no consent of the owner. Afterwards, they have to be disinterred, and sometimes there are family feuds which are referred to our Department because of that.

That deals with the requirements of interment of bodies in lots.

The next Section is the sale of lots:

"Regulation 12 places a responsibility on the owner of a cemetery to carry out certain actions when a lot or plot is sold."

By the way, the terms "lot" and "plot" are interchangeable in this Act. Sometimes they say "lot" and sometimes "plot" and I wish people in this business would agree to one word or the other.

"This is intended to avoid confusion which has occurred in many instances in the past".

In Regulation 12, you will notice the owner, when he makes a sale of the lot, must give a deed or some certificate showing the name of the purchaser, the location, the area, the dimensions of the lot, the date of purchase, and the amount of the sale price.

Those are all required on the certificate.





The next item is the keeping of registers:

"Regulations 13 to 15 have to do with the keeping of registers to show pertinent information on the owners of plots, the bodies buried therein and the transfer of ownership."

There are a great many places where we find there is no register kept, no one knew who was buried there, and no one knew who owned the plot, and this Regulation is passed to avoid that.

"Regulations 16 and 17 deal with the disinterment and cremation and merely supplement the requirements of the Act itself."

Then the next deals with the sale and care charges:

"Regulations 18 to 20 have to do with prices charged for plots and for services rendered in cemeteries."

By "services", we mean opening and closing the graves, and items of that nature.

"These require filing and approval by the hon. Minister of Health".

The cemetery must file those charges, and those charges must be adhered to or they must not exceed that price



without filing.

The next item deals with cemetery by-laws:

"Regulations 22 and 23 deal with by-laws or rules of cemeteries. They supplement the authority in the Act itself."

That permits owners of cemeteries to prepare rules but those rules must be approved by the hon. Minister of Health before they become effective. That is authority by the owner of the cemetery to set up the rules or requirements for the operation of the ground provided he can have it approved by the hon. Minister of Health.

In a great many cemeteries, small ones, church cemeteries particularly, there are no rules whatever and in this case, it probably makes very little difference because people have no difficulty getting along, operating the cemetery, even without rules. However, in the larger cemeteries, it is necessary that something of this kind be enforced.

This Regulation does not make it mandatory to have rules, but if there are rules, they must be approved by the hon. Minister of Health.

The next item deals with cemeteries operated for gain:

"Regulation 26 requires that every owner of





a cemetery operated for gain shall provide perpetual care and the maintenance for the entire cemetery."

That applies to not just one part of it, but to the entire cemetery if it is operated for gain.

"This is not a requirement of cemeteries that are not operated for gain. It also stipulates the amount of the sale price which shall be set aside for Perpetual Care".

Obviously, the intent there is to ensure that these cemeteries, as far as possible, will not become a charge against the municipality later on.

If there were no perpetual care, it would be quite possible to sell off all the land; there would be no or very little profit after that, and they<sup>would</sup> abandon it, and let the cemetery become dilapidated.

This attempts to set aside a definite amount for perpetual care.

I think it might be well to note the requirements under the second part of Regulation 26:

"Every such owner shall appropriate for the purpose of providing for such perpetual care and maintenance, an amount equal to at least 15 per centum of the sale price or 10 cents for every square foot of surface area whichever



is the greater."

That figure was set a number of years ago at a time when conditions were entirely different than they are today. Section 26 applies only to cemeteries operated for gain.

Under "Financial Statement" we have the following:

"This regulation deals with the financial statement which must be submitted to the Department of Health for cemeteries operated for gain. Reference is also made to this same subject in an amendment to the Cemeteries Act for 1953."

That completes the legislation of this Act and the Regulations. I do not know whether you want to discuss this or whether you want to go on further with the next item which I had in mind.

MR. THOMAS (Ontario): In the matter of perpetual care, it says:

"15 per cent of the sale price or 10 cents for every square foot".

That would be \$3.20 for perpetual care which would not provide very much. I think that <sup>it</sup> <sup>have been</sup> /would / difficult even when this was drafted, to provide perpetual care for that amount.



DOCTOR BERRY: It always was a fairly low figure, although that was the figure which a number of the cemeteries felt would be fair at the time. We have been endeavouring to obtain later information as to what would apply now.

The figure would have to be increased considerably now. A great deal depends upon whether it is an old cemetery or new cemetery. An old cemetery with a great many old graves to look after, would require a higher amount set aside than a new cemetery where they are selling lots now.

THE CHAIRMAN: Would you like to tell us now, Doctor Berry, what has been your experience with perpetual care funds. Have you had any instances of a cemetery not having been kept up the way the persons who bought the lots expected it would be?

DOCTOR BERRY: There have been instances in which difficulties arose with perpetual care funds.

One instance in particular was before this legislation came into effect. There was considerable difficulty in the perpetual care fund and a litigation occurred over it. The funds were used in a manner which permitted a loss on the investment. The funds were not invested, I believe, in accordance with the requirements of the Regulations now, the cemetery





had considerable difficulty maintaining the grounds. However, it has changed hands in the meantime, and is being maintained now, but there were not sufficient funds there at that time.

We do not have very many cemeteries operated for profit. I would like to give you some figures if you wish on the number of cemeteries of which we have a record and the classification of those by ownership.

As I mentioned before, our records are those of cemeteries which we have located or where approval has been asked, either to establish or enlarge the cemetery. We do not know how many cemeteries there are in Ontario. There are, we feel, a great many more than we have on record.

We have on record, just under 900 cemeteries, and out of this number, 116 are operated by municipalities. 389 are operated by religious organizations and 146 are operated by plot holders and non-profit groups. The latter might be organized companies with the understanding there would be no profit made. In a great many cases, the plot holders themselves own the cemetery.

There are 146 in that group. There are 23 private cemeteries operated for profit, in that group.



I will not say that is the complete number because some of the smaller cemeteries in the old days were operated for gain, and we did not have a record of them. But we do have a record of 23 private cemeteries operated for profit.

There are 213 cemeteries whose ownership is unknown because those are old cemeteries of which we have no complete records at all. That is a large number, but you will see the picture of the over-all statistics: first, is the religious organizations, then the plot holders and non-profit groups, then the municipally operated cemeteries, and then a very small number of cemeteries operated for gain.

If it would be helpful to you, I would be prepared to give you a list of municipally owned cemeteries. I can give you some examples here of the larger places which have municipally owned cemeteries. There are quite a number of them.

MR. THOMAS (Ontario): You mentioned the figure of 213 unknown ownership cemeteries. Can you give us any idea how many of those would be taken over by the municipalities for maintenance?

DOCTOR BERRY: Within the last five years, I would say there are probably between 25 and 50, which have been taken over by the municipalities for maintenance.



Some townships have adopted the policy of taking over all these old cemeteries. A great many townships had a number of small cemeteries, and the township simply took them all over. However, somewhere between 25 and 50, I should think, would be a fair number, in recent years.

THE CHAIRMAN: I wonder, Doctor Berry, if there might be a little misunderstanding in that where the municipality takes over the cemetery, do they own the cemetery then?

DOCTOR BERRY: Yes.

THE CHAIRMAN: All the cemeteries which have been taken over, are counted in that list of municipally owned cemeteries?

DOCTOR BERRY: Yes, and I would say they own the cemetery insofar as the Act itself is concerned. I think Mr. Walker might have some question in mind as to whether the ownership is complete or whether it is merely ownership in order to comply with the requirements of this Act.

MR. WALKER (Solicitor): I would be disposed to suggest, Mr. Chairman, the ownership is purely sort of "care-taking ownership". In other words, they have the responsibility of looking after the cemetery, but I would be very doubtful as to whether the ownership would go beyond that. I do not think it would amount





to virtual expropriation in connection with that type of neglected cemetery.

DOCTOR BERRY: A large number of the larger municipalities today are operating cemeteries such as Hamilton, Galt, Chatham, Belleville, and also a substantial number of towns. Sault Ste. Marie has a municipally-owned cemetery.

MR. ROOT: Do the municipalities take over all the old pioneer cemeteries as well?

DOCTOR BERRY: Some do, and some do not. Some just take over one particular cemetery, but in other places, they are taking over all the old cemeteries as well, and maintaining them.

MR. ROOT: How would that work out? If the municipality took over all the cemeteries, pioneer cemeteries and new cemeteries, have you any information how it would work out?

DOCTOR BERRY: Are you thinking of the use that is made of the older cemeteries whether they continued to use them, or whether they just maintained them?

In general, a situation like that would be met by closing the old cemetery, the municipality maintaining the grounds but permitting no further burials there, and having all the burials in the



newer cemetery unless there was a great deal of space still left in the old cemetery.

Niagara Falls also operates a cemetery municipally. St. Catharines has a very fine municipally owned cemetery.

MR. THOMAS (Ontario): Doctor Berry, in the case of privately owned cemeteries getting grants from a local municipality annually, how is the representation of the local municipality arranged on the private company?

DOCTOR BERRY: It is not necessary to have any representation on the cemetery at all. The Council can give a grant to any group without having any representation. Of course, they could determine how the money would be spent, but as far as I know, in the number of the instances where that is done, I think they do not have any representation.

Some Councils take the view that they would prefer to have the plot holders or similar groups operate the cemetery. They give them the grant each year and the municipality does not actually take over the cemetery.

MR. WHITNEY: I know of a case where a cemetery was abandoned and left alone for years, and the Women's Institute became interested.



They went to the towns and counties who were interested and through money they raised, they put the cemetery back in good condition. It was the feeling of the Councils at that time that the women could do this work much more economically and could do it with much better results than if the Council spent the money directly.

DOCTOR BERRY: Some of those organizations such as the Women's Institute have been very successful , and have done good work, and the Councils have supported them.

MR. WHITNEY: This was an old cemetery, but now they have a Board to maintain it, and if they need further assistance from time to time, they go to the municipality.

DOCTOR BERRY: That, I would say, is a very good way of handling this, and creating interest in the smaller cemeteries. Unless there is some group such as that, it is difficult to raise any interest in it at all.

I made reference in the discussion of the legislation to cremation and whether it is something which is likely to become more popular in the future, I do not know.

We have in this province, about 44,000 deaths





per year. Last year, there were two crematoria which cremated 358 bodies, or approximately 8 bodies out of 1,000 deaths. There were 44,000 deaths and 358 cremations. That comes to less than 1 per cent. In England, I understand they have over 15 per cent cremations.

MR. SANDERCOCK: Is that on the increase here?

DOCTOR BERRY: Slightly on the increase. When I calculated this figure a few years ago, it was about one-half of 1 per cent, and it is up to about .8 per cent now, but the rise is very insignificant.

MR. THOMAS (Ontario); In England, in 1939, there were 100,000 and last year in 1952, there were 125,000 cremations.

DOCTOR BERRY: They have gone into it to a much greater extent than we have here.

MR. GORDON: The reason for that they do not have so much land for cemeteries.

DOCTOR BERRY: Yes, but there seems to be a great deal of feeling in this country against cremation. People have the feeling they do not like a body to be cremated as soon as death takes place.

Those are the statistics which I thought you might be interested in.



THE CHAIRMAN: What is your opinion as to the completeness of that? I am surprised there are not more municipally-owned cemeteries, because I think in our district of Lincoln County, a great many of the cemeteries, practically all the older cemeteries, have been taken over.

Are you sure you have the complete list?

DOCTOR BERRY: No, I would not guarantee any of these figures. I think what you have in mind is regarding some of the very old cemeteries which are taken over by the municipalities, and we may have no record of them whatever.

It is very difficult to get a record of the old cemeteries, and if what you say is true, a great many of them may be taken over by the municipalities.

Of the 900 cemeteries which we have on record, there are 116 municipally-owned, but it might be considerably more than that.

I should like to get those figures a little more accurate if it would be useful to you, and I think we can give you a list of all of the municipally owned cemeteries later.

THE CHAIRMAN: Do you plan to say anything to us this afternoon regarding the renovation of



cemeteries? Have you anything to say regarding the present set-up so far as headstones are concerned? Is it possible, under our present legislation, to remove headstones?

DOCTOR BERRY: No. What I had in mind, Mr. Chairman and members of this Committee, if you wish, I have two other items which I thought might be useful to you.

One is the review of the legislation in other countries, particularly in the United States where we have been able to obtain copies of legislation. Unfortunately, we do not have very much information about the situation in England, but I would like to present to you some problems in administration as we encounter them.

I am not offering recommendations as to what you should do with them, but I do think these are problems which we encounter in the administration and if you would like, I can present them to you and if there is no question, we can go on with that.

As far as legislation in the United States is concerned, we secured statements from 43 states and the District of Columbia. About two years ago, out of that group, we received their legislation, and I do not think legislation has changed a great





deal in the interval.

We have 43 States reporting and the number of States with no jurisdiction -- that is, no State jurisdiction -- they may have some legislation on it, but there is no department of the State which is in control of the administration.

MR. THOMAS (Ontario): Would that be Federal legislation?

DOCTOR BERRY: No, State legislation, not Federal legislation at all. There is something in practically all the health legislation of every State dealing with cemeteries, but it might be very meagre, but it is not, for example, under the jurisdiction of the State Department of Health or some other State department in control of the administration of cemeteries.

24 out of 43 reported there was no State jurisdiction whatever over cemeteries.

13 reported jurisdiction or control by State Health Departments. Where there was control, it was almost always by the State Department of Health which would be similar to the provincial Department here.

Other agencies having jurisdiction amounted to 3 or 4. In California, they have a Cemetery Board which deals with the commercial aspect of cemeteries



only.

In Illinois, the Auditor of Public Accounts deals with it, and that, of course, is the commercial side of it also.

In New York, a Cemetery Board operating in the Department of State consists of three members, one of whom is the Commissioner of Health.

Those are examples of agencies having jurisdiction in the United States.

I have gone over practically all of the legislation in the United States that I could obtain and it is interesting to review it, and compare it with our own legislation, and also to know the problems they have in their administration.

MR. THOMAS (Ontario): What is the set-up in the different provinces of Canada?

DOCTOR BERRY: Very much the same as our own from the information I have. I should have obtained for you the legislation in the various provinces, but we can get that. I do not have, at the present time, accurate information.

Those are the figures in the United States and I do not have very much in connection with England.

It would be well, I think, to draw your



attention to a situation which arose in the State of New York, where the publications said there was a request for a legislative committee. It seems it was almost identical with this Committee of which you are members.

I am not certain whether the committee was appointed, the published information is not too clear on that, but at any rate, there was a report by the Department of the Attorney-General of the State of New York, and they drafted legislation in 1949. That legislation is not modern. It is extensive and it follows, to some degree, the same as the legislation in California, and to a lesser degree in Illinois.

There is also fairly good legislation in the State of New Jersey. I was wondering, Mr. Chairman, whether you or some or all of the members of your Committee had in mind going to some of these places in the United States, where they have gone through experiences somewhat similar to what you are having. If you have that in mind, I would certainly suggest you visit the State of New York and the State of New Jersey. I am sure if you had an opportunity to discuss it with these people, you would receive very valuable information.

There are a number of publications on the experiences they have had in New York and California





and New Jersey, which are very useful.

There are some items in the California and New York legislations which are very interesting. They approach some of the problems in a little different way but with the same objective in mind.

Mr. Chairman, I would now like to present some of the problems in cemetery administration as I see them after our experiences with the administration of this Act for some time.

There naturally have arisen a number of problems and the manner in which they should be dealt with. The first of these problems deals with kinds of ownership and management. There are religious groups, municipalities, plot holders, and non-profit organizations or private groups, and there are cemeteries operated for gain. The latter is a relatively small number, but still some of them are large cemeteries located in the larger centres.

There is always the question that is raised by a number of people who are associated with the administration of cemeteries of the type of ownership or administration which should prevail in the future. Should it be that anyone who wishes to operate a cemetery, be allowed to do so, should it be considered as a public utility or a public service,



and the responsibility of the municipality to provide burial grounds?

I think there is a tendency on the part of religious organizations to get away from the necessity of providing burial places if they can, but often they are forced to do so because there are facilities made available by the municipality or by other groups.

I do not know what the answer is to that. I am not making any suggestions, but merely raising the question which comes up quite often in the discussion of cemetery administration.

What type of ownership and management is best in the future? I think one cannot get away from the thought that it is a public service or a public utility, and if it is such, then there is an obligation on the part of a municipality, the same as there is to provide water supply, sewage disposal, and other utilities of that nature.

We are changing a great deal in our methods of doing business and living in recent years, and it may be there is sufficient grounds for considering what type of ownership is best suited to meet the needs of the province in the future.

The second problem is the determination of



the need for cemetery space. How much cemetery space is needed by any municipality or area such as the Toronto Metropolitan Area?

There is no effective way of determining how much burial space should be set aside or how many years in advance this should be made, and when faced with the problem of approving or disapproving of a cemetery site, it is a factor which should not be overlooked entirely.

If you have too many new cemeteries starting, the old ones will not be able to maintain their grounds properly, and they will eventually revert to the municipality. There is a tendency to do that.

If there is not enough cemetery space set aside, the community is handicapped as well.

Somewhere in between, there is a happy medium. It is true you can predict what the demand will be for a number of years, but the trouble arises when you move bodies from place to place. People want some choice of their own cemetery, especially in religious groups.

The only legislation I have seen where they attempt to set up some definite requirement is in New Jersey, where they limit the number to five in any one municipality except religious groups, and three





per cent of the area of the municipality shall be in cemeteries.

That is the only case where I have seen any reference to actual determination of this problem,

You can see there is a need there for deciding whether or not a cemetery is required in a certain area, and what the implications are . There is a problem as to whether there are not enough cemeteries, or if there are too many.

I mentioned earlier, the problem of preventing the old cemeteries, or any cemetery for that matter, becoming a charge on the municipality. The Act says <sup>if</sup> the owner is unknown or unable to maintain it, then it must become the responsibility of the municipality. I know of several instances where that has taken place.

I recall one instance some years ago where a cemetery was operated for gain. A number of the former owners had died, most of the land was sold off, and they simply shipped their records down to me and said, "We are quitting. Do what you like with it." The municipality had to take it over. They did not want to, but they are operating that cemetery now.

In that case, the land was practically all sold before there were requirements for perpetual care, and items of that kind.



Some of these cemeteries are in a run-down condition and the municipality sometimes objects to taking them over.

If land speculation is permitted without the necessary restrictions, then you can see that sooner or later it will become a charge against the municipality.

Of course, there are ways in which restrictions can be placed on the sale of cemetery plots. There is little profit, I believe, in the maintenance of a built-up cemetery. There is only the income <sup>the</sup> from/perpetual care fund and from the opening and closing of graves, and the profit -- if you want to call it that -- is in the sale of land. Once the land is all sold, there is nothing more to be gained from it, and it becomes a business in which very few people would be interested.

The next problem is that of assessment and taxation of cemeteries. I hear the question raised very often, "Should cemetery lands be assessed and taxed?".

At present, they do not pay any taxes as they are not assessed under the Assessment Act at all, if the land is actually in use as a cemetery.

There is very often the question asked, by some, if that is the right procedure. If a profit



is being made in a cemetery which is operated for gain, should they be taxed or assessed the same as any other profit-making enterprise?

There are problems on both sides of that question, but I mention that as one of the problems which we encounter in dealing with this legislation.

MR. THOMAS (Ontario): Doctor Berry, you said there were problems on both sides of that. Would you care to elaborate?

DOCTOR BERRY: Let us say you attempted to assess a cemetery and charge taxes on it. That would be quite feasible while the land was being developed, but after that land was sold, the question would arise where the money was coming from to pay the taxes. Would that not, under the circumstances, be a further inducement to turn it back to the municipality?

There are angles which will have to be studied carefully on both sides of that before any definite decision could be reached.

The other side is if land is being sold at a profit, why should not they pay taxes on it?

The fifth problem I should like to present is speculation in sale of plots. I do not think this is happening in this province now, but at one time,





there was a tendency for cemeteries to be established, and the owners of cemeteries to <sup>go</sup> out and sell blocks of lots with the hope that the person buying them would be able to sell them off later on at a higher price. I notice that has been done a great deal in the United States.

This was done once in Ontario and I know in a number of instances, the people who bought those lots had little opportunity to get rid of them when they wanted to.

One particular case which I might mention concerns a man who bought five plots in one cemetery, and was trying to sell them. I did not have a great deal of sympathy for him because he had bought them from someone else for some mining stock, and I got the impression the mining stock was not worth much. However, they probably both wound up about even.

However, I believe that is something which is not being done much today, but it was in the older cemeteries operated for gain.

The other part of that problem is, should a plot holder who has only one or two plots and who obviously did not buy them for speculation, be allowed to sell those plots for more than he paid for them?



Some cemeteries want to restrict the sale price of a plot or a grave in it to what the man paid for it. The price, in the interval, might have changed completely.

A man might have bought it for \$15.00 or \$20.00 a number of years ago, and held it for years, and the price in the interval has gone up. If he is to be restricted to the original price, it hardly seems fair. I would not actually call that "speculation in plots", and yet it is something after the same fashion.

In addition to that, I do not know how anyone could control the price of the plot. If a man wanted to sell a plot, he would not necessarily need to reveal the price at which he bought it.

These are some problems which arise in the speculation in sale of plots.

The next problem concerns development of land for cemeteries. Should the sale of new lots be permitted prior to the sale of the cemetery?

By "development" I mean the laying out of roads and walks, landscaping, etc. It has not a great deal to do with the actual use of the cemetery, but it makes it more attractive.

There is nothing in the legislation at



present which says a company or a person owning a cemetery shall develop it before he starts to sell plots.

Sometimes, people are disappointed when they go out and to look at land where they have bought a plot, and find it is not very attractive in appearance.

As far as our Department is concerned, it has never attempted to control a situation of that kind, but if people are going to be disappointed in what they buy, there might be some question as to whether a cemetery should be developed, to some degree at any rate, before any plots are sold.

That involves, naturally, a financial consideration, because the person who is developing land might wish to sell plots to get enough money to develop the land. It would mean he would not have to put up as much money before development took place.

Those are the problems encountered in this administration in connection with development of land for cemeteries.

The next problem is supervision of cemeteries. I mentioned during my discussion of the legislation that local supervision is under the local Board of Health. A question which arises is, "Is there any better procedure than we have at present?".





We are greatly extending public health facilities in this province to include health units. Health units are better organized than the part-time Health Boards and they have a better opportunity to do these things, than prevailed in the past. I present to you, the question as to whether there is some other way which would be better for the supervision of these cemeteries, than having them under the local Board of Health. I am not making any recommendation.

Is there more inspection needed? I think these questions must be considered. They are coming to us repeatedly.

When we say, "inspection", do we mean at a local level or an over-all inspection at a provincial level, or a county level?

The Department of Health of the province of Ontario does not attempt to make inspection of cemeteries. That is not an obligation they must assume under the Act, but it is obvious that a great many of the cemeteries are maintained in nothing short of a disgraceful condition.

I saw one cemetery not long ago where one party who lived in the United States came over here and spent her own money to clean up a cemetery, last



year, with the understanding the grounds would be maintained properly. This year, they were grown up in grass and weeds, and you could scarcely see a single monument from the road.

That is a question of lack of supervision, or lack of interest on the part of those responsible for them. You might say in that case, the local Board of Health fell down, which in that case, was a part-time Board of Health.

Supervision of cemeteries is not something that Boards of Health are particularly "keen" about. Some of the Health Units have done exceptionally good work, but unfortunately, they have been organized such a short time and have had so many problems to deal with, that they are dealing with the more pressing problems first and are gradually coming around to supervising cemeteries.

I present that problem to you as one which you might wish to consider.

The next one is the question of the sale of cemetery plots. Is there any control needed in the sale of plots? Is there any question as to who shall sell plots or how they shall be sold?

There is control over the price, but is there control needed in the sale of plots and who should sell them?



In the United States, they go from one extreme to the other. A great many of the States have no supervision over the sale of plots. Plots can be sold by anyone at any price they choose.

In California, they license people who are to sell cemetery plots. In New York State, they prohibit the sale of plots on a commission. They can only be sold by regular employees of the cemeteries and not on commission.

So you have in that, three procedures,:

- (1) Where there is no supervision at all.
- (2) Where there is licensing of the person who sells them, the same as salesmen for other activities are licensed.
- (3) They are only permitted to be sold by the cemeteries by their own regular employees.

The next item I have here is the commercial aspect of cemeteries. Are changes needed in commercial aspects of cemetery administration, such as speculation in lots, methods of selling, prices for transfer of cemetery lands, control of prices in general?

Those are problems which affect the commercial side of cemetery administration, and I think you will want to consider whether the legislation regarding that is adequate now, or whether you would





like some change in it.

Should these restrictions apply to profit cemeteries alone, or to all cemeteries?

In the United States, in California, and New York, their legislation specifically eliminates that control over religious cemeteries and municipally owned cemeteries, and only those operated for gain.

Those are problems facing the commercial aspects of cemeteries.

We come now to the next problem which is in relation to perpetual care administration, and I think that is one of the problems which causes more difficulty, more questions to our Department, than anything else in the administration of cemeteries.

You have seen the present procedure which is involved in the Act, and the Regulations. There are difficulties in respect to old cemeteries where plots were sold off and the amount set aside for perpetual care was so small that today it is far from being adequate to care for those plots.

If there has been enlargement in the cemetery, in the newer part the price can be put up to take care of the maintenance of the old plots. That is a difficult matter to deal with.

Under "Perpetual Care" there are a number of procedures which might be listed. First of all,



is the amount of perpetual care which should be set aside for each plot. We refer to the fact that in the Regulations at present, it is 15 per cent of the sale price or 10¢ per square foot.

If you add that to the sale price, then the cemetery which sells plots at a high price, might be able to maintain them to a much better degree than the one which sold plots at a low price, although maintenance may be about the same in each case.

Therefore, there is need for consideration as to whether it should be calculated at so much per square foot, and whether that would be a better arrangement than a percentage of the sale price. If you do that, then it is going to vary in different places.

It is not an easy item to deal with, but it is certainly one of the problems which arise under perpetual care of cemeteries.

THE CHAIRMAN: Is it customary at all to have a plan whereby you buy your lot for a certain amount of money and you pay a certain amount for perpetual care?

DOCTOR BERRY: That is customary today on almost all the lots where there is perpetual care.

A lot is sold for, say, \$300. and a



proportion of that is set aside for perpetual care, the rest going into the general fund. It is compulsory to do that only if those cemeteries are operated for gain. A municipally owned cemetery or religious cemetery is not required to set aside anything for perpetual care.

The second item which might be brought to your attention under perpetual care administration is the designation of what is involved in perpetual care. Should it mean just a plot? Should it include monuments?

As you drive around the country and see monuments tilted every way, it is obvious there is need for some maintenance of those monuments.

In general, perpetual care does not apply to the monuments, but merely to the plot itself, and the cutting of the grass.

In addition to that, the problem arises if there is perpetual care in the cemetery, and the people who are operating the cemetery do not care to spend that money on it, or do not care to maintain it, what is to be done?

We get complaints from time to time about plots in certain cemeteries where people have paid perpetual care but the grass is not cut, as they think





it should be.

There is nothing very definite in the legislation. Although the legislation says that this money is to be set aside for maintenance of the ground, but they do not say what it means. Maybe it means cutting the grass twice a year or every week, we do not know.

The third item is the control of funds set aside for perpetual care.

Is there sufficient control at present over funds which are set aside for this purpose? They must be invested in trust funds, but is there some other means which should be adopted to make regular inspections of this?

MR. THOMAS (Ontario): What is the practice now?

DOCTOR BERRY: The practice is simply they must invest these funds in trust funds, and they must now submit a statement to the Department at the end of the year. That is not a very complete coverage of the picture, in my opinion.

THE CHAIRMAN: That applies to what?

DOCTOR BERRY: Cemeteries operated for gain.

THE CHAIRMAN: Other cemeteries have no check whatever?

DOCTOR BERRY: No.



Should all cemeteries be required to submit statements of perpetual care, or only those operated for gain? Should they be asked to submit a statement so that it could be checked? That is for you to discuss in committee.

Another item, should perpetual care be made mandatory for all cemeteries?

The State of Pennsylvania has made it mandatory irrespective of whether they are operated by religious groups or otherwise, and they are following that law now. Every cemetery must set up a perpetual care fund.

When we talk about "perpetual care", that is a misnomer. There is nothing about "perpetuity", and there is a tendency on the part of some to use a different term.

"Perpetual care" is the word used in our legislation, but it probably is a bad term. Some other names have been used, such as "maintenance fund" or "cemetery care fund" and perhaps if legislation is changed there will be a better term<sup>used</sup>/than "perpetual care" because it is hardly fair to expect this money to maintain the plot in perpetuity. It will for a number of years, but that is something to consider.

Another item, should perpetual care funds be invested at once or at what period of time?



If a cemetery collects funds, there is nothing to say they must be invested at the end of each month or each week, or just when they shall be invested, or how.

Then, regarding instalment buying of plots, there does not seem to be any requirement that this money shall be put in the perpetual care fund until the plot is paid for.

I do not know what the practice of the various cemeteries would be, but legislation does not seem to make it mandatory they <sup>should</sup> put this into the perpetual care fund until the plot is paid for. The reason for that is the man does not get a deed to the plot until he has paid for it entirely.

THE CHAIRMAN: I wonder if we could have a five minuted recess.

---Whereupon a short recess was had.

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---Upon resuming.

MR. ROOT: I was wondering if any of the United States' legislations provided that all cemeteries in a municipality should be under the Municipal Board, pioneer cemeteries and so on.

In my own area, a problem was encountered





where there were religious cemeteries, and during the last fifty years, a great many of the churches had disappeared and congregations had amalgamated.

The fences around the cemeteries fell down and cattle were roaming in them.

I wonder if it would be practical to have a municipal cemetery committee take over all the cemeteries in a locality? Have you any record of any in the United States?

DOCTOR BERRY: In the United States, their legislation is put this way: that local municipalities may set up Boards or may control cemeteries in their own municipalities. That is quite common legislation in the United States, but I do not know to what extent it has been practiced.

I think it would be quite feasible to do what you say under the legislation in Ontario. With the Act as it is, a municipal committee could take them over, and if necessary, expropriate them. There is authority to take them all over, whether the cemetery people want it or not.

MR. ROOT: Would they have the power to say, "There is no other group to operate a cemetery in this municipality. We will sell all plots and maintain all the cemeteries in the municipality."



DOCTOR BERRY: That is a moot question.  
I will ask Mr. Walker.

MR. WALKER (Solicitor): I would offer the suggestion that in view of the religious associations of some of the cemeteries, I doubt whether any municipality would venture that far, to give a mandatory ruling on the question of burials and burial grounds.

DOCTOR BERRY: There is nothing now which would permit that, but when I mentioned my public service idea, I thought if the municipality provided the land, there would be an opportunity for many of the religious organizations to take part of that.

There are a large number of cemeteries, for instance one in Wallaceburg, where the Protestants and Catholics have the same cemeteries, but use different parts of it.

They have an excellent arrangement there where various religious groups can use certain parts if they want to be segregated from the rest.

If the municipality does take provision for the land, I do not think that problem would be too difficult, but I do not think there is anything which would make it mandatory that no other cemetery could be set up in that particular area. I think



there are some very good points in your ideas.

MR. ROOT: I wondered if the municipality could say, "We will direct all land for cemeteries, and you will have to keep it up to a certain standard".

We have all heard criticism of private cemeteries, and I am not saying whether it is just or not, but if the municipality is going to take over the pioneer cemeteries and someone else is going to come in and sell all the new plots, the man who buys the new plot is going to pay taxes to support the old one. I am just asking that question now.

DOCTOR BERRY: That is an interesting point. Continuing from where I stopped before dealing with perpetual care administration, I have a number of aspects in this which I want to place before you, and one to which I made brief reference was, should perpetual care include the maintenance of monuments and markers, or just include the places.

Another item is the authority of executors to pay perpetual care charges on plots. Unless that executor is authorized to pay perpetual care, I believe he cannot do so, even though the plot is not under perpetual care at the time its owner dies.

There is some distinct advantage in having an executor authorized to pay perpetual care, to set aside a sum for perpetual care of a plot, if that has



not already been provided for, to pay it out of the estate.

That is a problem which arises from time to time. Should they have that authority? I bring that to your attention.

The next item concerns the abandonment of ill-kept cemeteries. That is a great problem in this province. There are a great many cemeteries either abandoned or given no care.

I gave you an example of one just a short while ago, and you need only to drive around the country to see them grown up with weeds, no fences around them, tombstones knocked hither and thither, and there does not seem to be any interest shown in them.

MR. HANNA: Could we get a record of all of these cemeteries?

DOCTOR BERRY: We have no record of all of them, but we do have a record of about 900.

MR. HANNA: How many are there?

DOCTOR BERRY: I think there would be between two and three thousand.

MR. HANNA: I think you should have a record.

DOCTOR BERRY: Yes, and we are attempting to get that record, but it is a slow process. Even the municipalities themselves to whom we write, are





not able to give us that list.

MR. HANNA: Should someone check over each township?

DOCTOR BERRY: I raised the question earlier regarding whether further inspections of cemeteries was necessary. There is no inspection made at the provincial level now, or at the county level, and the only ones making inspections are the municipalities.

That is a question I think you should consider.

In those abandoned cemeteries or those which are not properly maintained, it seems to me improvements should be provided to facilitate the maintenance of them as much as possible.

Mr. Chairman, I mentioned a short while ago the fact that no monuments could be removed or moved to one side so that the ground could be mown and kept in better condition.

That is not permitted under the existing legislation. Nobody is allowed to move the tombstone from the ground without permission of the owner, and that has caused a hardship in many of the older cemeteries. If they could move these tombstones and put them in one central place, they could keep the grass cut very cheaply. They could send a power mower in there and it would be an easy task to do it, but



as long as the tombstones are there, there is that difficulty.

There are problems there no matter what you do. As soon as you take the tombstones away, a relative who has not seen the cemetery for twenty years comes back and objects.

MR. HANNA: Are there any townships which would object to taking care of the local cemeteries?

DOCTOR BERRY: Yes, very much. We have had a number of instances where they will not take them over unless they are compelled to.

MR. HANNA: Suppose the government paid 50 per cent?

DOCTOR BERRY: Those are some of the things which might stimulate interest in it.

I asked the question, "How can interest in cemetery maintenance be stimulated? Should a publication be printed regarding the maintenance of cemeteries for general distribution? Would it be helpful?" I think there is need of some publication on the proper maintenance of cemeteries.

MR. HANNA: I think it is a good political move to fix up some of the old cemeteries. I do not know anybody in small communities who would object to taking care of these old cemeteries.



DOCTOR BERRY: I present that problem to your Committee. It is a very difficult one today in the administration of cemeteries, to develop some means of maintaining these old cemetery grounds.

MR. LYONS: In many instances, in growing municipalities, many cemeteries were once on the outskirts of the municipality, which has since then grown up around them, until now they are in the heart of the municipality, and they are very valuable real estate. They are just going to stay there in many instances.

MR. HANNA: I think you should thank the large companies which have produced very beautiful spots for civic burials, because, after all, they are all monuments to the province.

DOCTOR BERRY: The next item I have concerns the closing of cemeteries, and removal of bodies. There are several reasons for closing cemeteries today, such as physical changes in the landscaping, highway widening, power development, and so on. We have an example of the latter in the St. Lawrence development, which will affect a considerable number of cemeteries which means closing them and probably removing the remains to other places. The present procedure is cumbersome, and we would like to know





whether there is any better method of dealing with that.

As you have said, some of these were out in the country to start with and the development comes around them. They are an eyesore to the people who live there, and the land is valuable as well.

That is a problem in our administration.

Another item I have here affects cremation. It is not much of a problem and I do not know whether any changes are needed in the legislation. There is nothing that says how ashes shall be disposed of.

It is general in the legislation in the United States that they do not require that ashes be deposited in any particular place, but there are one or two exceptions where they must be placed in a columbarium or a cemetery. Once cremation has taken place, it is assumed a body no longer exists, and the ashes can be dealt with as the relatives desire.

That is something I think you might consider, whether any change is required in that.

The last item I have here is regarding some changes in legislation. I do not want to take too much time on this, but there are a number of items in the existing legislation which I should like to run over hurriedly and place before you.



As I mentioned, this is an old Act. Is it necessary, after you have made your enquiries, that a number of changes be made, or is a new Act needed entirely?

Those will be items which you will have to keep in mind.

Some of the matters which come to my attention are the better designation of surveyed areas included in the Regulations. I think that should be more definite than it is now. It is not too difficult a problem.

The rules for election of trustees for all cemeteries controlled by Boards -- I made reference to that in the legislation.

The designation of a specified period of service rather than for life -- I believe the legislation concerning the appointment of trustees is weak and needs some adjustment.

Then, there may be a change needed regarding the disinterment of bodies dying from a communicable disease. I mentioned before, no matter how long after that body has been buried, if the person died of a communicable disease, the same restrictions are placed as if he had died only a month ago, which obviously is not fair.



Next, is the procedure in the municipality taking over a cemetery. There are problems involved there: (1) whether it has been a privately-operated cemetery which cannot be operated any longer. Where they had a perpetual care fund, the municipality is desirous I think, of taking that over, but they hesitate on the grounds they do not know what responsibility they will have to assume, particularly regarding perpetual care.

Another question is <sup>whether</sup> / they are all going to get perpetual care, although there is no provision made for it now in the legislation.

Another item is the control of all structures above ground, or burial, or deposit of the dead, in mausoleums, etc. There is very little reference to that, now.

Another item is the shipment of dead bodies by public transport. There needs to be some clarification of that.

Another one is regarding free graves for indigents. I mentioned Section 29 as being applicable there, and I think consideration should be given as to whether that is needed now at all with social services and other means for taking care of that. Should it be dropped?



Another question is the need for fences about cemeteries. If there are fences, who supplies the fences? It says in the Act, "A cemetery shall be fenced". It does not say who shall put it up, whether it is the man who owns the land outside, or whether it is the responsibility of the cemetery owner.

Then, there is the question of the collection of unpaid annual maintenance charges, under Section 18. How can that be taken care of?

We have also the problem of the continuance of payment to the Public Trustee. At present, when funds are deposited with the Public Trustee in Toronto, there is an obligation that all funds collected for the perpetual care in future must also go to the Public Trustee. In other words, once they start to be paid, they must continue.

Is that desirable or is a change necessary?

Another item is regarding the authority of trustees to require perpetual care on all plots if they are desired. If an old cemetery has not had perpetual care in the past, can the trustee be forced by the owners of the cemetery if they pass a by-law requiring that everyone shall have perpetual care, to comply with that by-law?

There is nothing in the Act that says they





must, but these are items which need some consideration.

Another one is the amplification of the owners' responsibility for maintenance of the grounds. How often should the grass be cut, and in what condition? Probably that would be covered by inspection, but there is a weakness there.

There is a provision for the sale of the unused part of the plot. That seems to be reasonably good now, but I do not know whether any simplification can be made.

The next item deals with the annual grant of money by the municipality to the cemetery. At present the legislation says if a municipal council wishes to give a grant of \$25.00 or \$50.00 to a cemetery, that by-law must be approved by the Department. It does not seem necessary.

MR. HANNA: Has the Department any plans to bring in any recommendations to this Committee?

DOCTOR BERRY: I am just giving you these problems. If you want comments or recommendations later, I will be glad to consider them. I am only outlining problems today, and it depends upon what the Committee wants me to do.

MR. GORDON: These are all problems which we will discuss as we go along.



DOCTOR BERRY: The next one I have here is the prohibition of cemeteries in townships as well as urban land. At present, municipalities can prohibit cemeteries in their municipality, and the township cannot. Maybe that is wise, but some townships want to prohibit cemeteries being established.

That is something else for you to consider.

The date of expiry of the Certificate of Approval if land is not used for cemetery purposes, is another problem.

It is very difficult at times to follow up on these Approvals which were issued a number of years ago, and no use made of them.

Should an Approval expire within a definite number of years if it is not used?

Those are items for you to take into consideration.

Mr. Chairman and gentlemen, there are the items which I wish to place before you for consideration, as I see them, in going over the list. That is all I have to offer.

THE CHAIRMAN: Are there any questions you wish to ask Doctor Berry?

I wonder if you would tell us, Doctor Berry, if you know, whether or not many cemeteries



that began by religious bodies, have become municipally owned cemeteries because of the fact they were neglected?

DOCTOR BERRY: There are a number of them. I could not give you any definite number there, but that is because we do not have a record of all of these small religious cemeteries which have changed hands.

THE CHAIRMAN: In our own community, I can think of at least five which started out as religious cemeteries, sponsored by religious organizations, which were later taken over by the municipality.

The reason I mention that is to bring to the attention of the Committee, the fact that there have been no religious organizations ask to be heard by this Committee.

It looks to me that we must try to get the "thinking" of the religious organizations. Perhaps Mr. Scott, our Secretary, should make some effort to point out to these religious organizations the importance of appearing before this Committee and enabling us to know their views.

If some legislation is brought in which is not satisfactory to them, we will hear about it then.





MR. ROOT: I think that is a very good suggestion. I have seen out in the country where denominations established cemeteries hundreds of years ago, and have since moved their churches into the town and left the cemetery without fences.

DOCTOR BERRY: That is a very common problem.

MR. ROOT: With motor transportation, it was much easier to travel five miles to the nearest village and close the church and forget about the cemetery.

I would like to hear representations from religious groups if they are willing to accept the responsibility for the cemeteries they abandoned.

DOCTOR BERRY: That is another reason for considering this as a public service or public utility.

MR. ROOT: That is why I mentioned the municipality taking over the cemeteries.

MR. THOMAS (Ontario): You mentioned the fact that a tombstone could not be removed without the permission of the owner. If that regulation were loosened a little, and if a reasonable effort was made to find the owner, I think it would be better.

I think that Regulation has the effect of making the municipal council a little hesitant



about taking over at the present time.

DOCTOR BERRY: I think so. That is a good point. You would necessarily require a great many safeguards in connection with it, but I think there is some justification in considering a revision in that, to enable the municipality to take it over. If they could put a power mower in there, there would be no difficulty about them cutting the grass, but as long as they have to go around all the stones, they do not want to do it.

THE CHAIRMAN: The reason I mentioned that particularly, I was surprised to find this summer in England, that there are a great many neglected cemeteries, and they are church cemeteries.

In England, a great many of the cemeteries have cleaned up and the headstones are all placed around the cemetery in a concrete wall, and they come in with a big mower, as you suggest, and do the work quickly.

DOCTOR BERRY: A number of countries have done it, but I know of one instance where they did that and a person complained bitterly. All the tombstones had to be replaced. They had no alternative.

I think there may be restrictions placed around a revision of that kind, but it would work out



to a decided advantage. After all, if the stones are placed around in concrete walls, they have the same recognition and value.

MR. THOMAS (Ontario): They are the same in perpetuity.

THE CHAIRMAN: Some cemeteries require all the bodies to be disinterred at the end of seven years and cremated, in some countries.

Are there any further questions of Doctor Berry?

DOCTOR BERRY: In the United States, there is a great deal of burial above the ground. In the Southern United States, in many places, all burials are above the ground.

In New Orleans, for instance, that is the case, and that is why I made reference here to the fact there is nothing in the legislation about burial above the ground. Maybe that is going to be one of the ways they will bury in the future.

THE CHAIRMAN: That is really quite important, because in some countries they permit concrete block structures with poor foundations to be built which later fall apart.

MR. SANDERCOCK: What about little private cemeteries on farms, throughout the country?



DOCTOR BERRY: The way the legislation now provides, it is becoming the responsibility of the municipality, and a great many difficulties have arisen concerning those small cemeteries over the years. Some of the farmers do not want anybody going in on their farms, so it is difficult to know what to do under those circumstances. There is nothing in the Act which says there must be access to the cemetery, and many of them on the farms have no access.

THE CHAIRMAN: There is one thing I would like to bring before the Committee. I would be very glad to have Mr. Walker appointed as Counsel for the Committee. I feel we should have someone with us who will keep us straight. Is that agreeable to the Committee?

Agreed to.

THE CHAIRMAN: Is there anything else?

MR. THOMAS (Ontario): Once again, I would like to express my appreciation for Doctor Berry's very fine explanation of the Act and the problems which arise under it.

I have learned very much this afternoon about cemeteries, which I did not know before.

THE CHAIRMAN: I felt we needed a grounding before we went out to inquire further. I felt we





should have some idea where we stood.

DOCTOR BERRY: It is quite involved.

THE CHAIRMAN: What we will probably do is endeavour to divide into two days those who wish to appear before the Committee in Toronto, and then if we find our time is getting along well, perhaps we can make a tour of the cemeteries in this area at that time. I will have Mr. Scott canvass the situation as far as cars are concerned.

I should also like to ask Mr. Scott to write to the heads of the different church organizations and point out to them about this Cemetery Committee, that there is a possibility of the Act being strenuously revised and we would like the religious bodies to know of what is going on and be satisfied with what is done.

DOCTOR BERRY: I would like to say my reaction to the idea of municipally-owned cemeteries is that we use them if they are available. We should find out if that is what they want, or what ideas they have.

THE CHAIRMAN: Mr. Scott has made some inquiries and we find that in Jewish cemeteries, it is quite a problem. Each one has a separate group.

MR. ROOT: You cannot "buck" public opinion,



but if they express their opinions, we would get to know them better.

MR. WHITNEY: I do not think we should completely lose sight of the fact so many local people have taken a great deal of interest in them.

I do not think we should give them the idea we are going to take them over, and we are not recognizing their good work.

Perhaps if there is a case where a group is responsible for neglecting a cemetery, there should be at a certain point of dilapidation, a provision that it becomes the responsibility of the municipality. If the local group cannot operate the cemetery properly, a dividing line should be drawn where the municipality would take the responsibility.

THE CHAIRMAN: With reference to that, there are no witnesses who are interested in neglected cemeteries, appearing before the Committee.

We hear a lot of criticism of neglected cemeteries, but no one is sufficiently interested to appear before the Committee.

MR. SANDERCOCK: What do the municipalities think about being "saddled" with the responsibility?

THE CHAIRMAN: They are not "saddled" yet.

If there is no further discussion this



afternoon, that will be all.

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---Whereupon at 4:15 o'clock, the further proceedings  
of this Committee adjourned, until Monday,  
September 14th, 1953.

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